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Before the
Federal Communications Commission
Washington, D.C. 20554

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In re Applications of)	MM Docket No. 88-577
)	
LIBERTY PRODUCTIONS,)	File No. BPH-870831MI
A LIBERTY PARTNERSHIP)	
)	
Et. Al.)	
)	
For Construction Permit for		
New FM Channel 243A		
Biltmore Forest, North Carolina		

To: The Commission

REPLY TO
OPPOSITION TO AMENDMENT

Liberty Productions, a Limited Partnership ("Liberty") by counsel herewith submits its reply to the Opposition to Amendment, filed by Willsyr Communications Limited Partnership ("Willsyr") on November 22, 1999 in the above referenced proceeding. In support whereof the following is shown:

1. Willsyr opposes the acceptance of the Amendment which Liberty filed to its above referenced application on November 10, 1999. Willsyr argues that the Amendment may not be accepted unless and until the Commission determines that Liberty had reasonable assurance of its initially proposed transmitter site, when it filed in 1987. Stated otherwise, Willsyr's contention is that, despite the fact that Liberty's amendment was submitted as of right and despite the fact that site availability is no longer a relevant issue, it should nevertheless be required to show good

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cause for the acceptance of the amendment.

2. Pursuant to 47 CFR 73.3522(a), as amended, an applicant subject to competitive bidding may submit a minor amendment as of right: (a) in response to a deficiency letter issued by the Commission, (b) pursuant to Section 1.65 or (c) to make a minor change in its proposal. Public Notice DA 99-2153, released October 12, 1999, announce the close of Auction 25 and directed winning bidders to submit minor amendments to their pending long form applications on or before November 12, 1999. See: First Report and Order (FCC 98-194), 13 FCC Rcd. 15920 (1998) ("First Report and Order") at paragraph 98; 47 CFR 73.3576(f)(5)(i). Liberty's Amendment complies with these provisions and was submitted as of right. As such, no showing of good cause is required.

4. Willsyr argues that nothing in the Commission's First Report and Order (FCC 98-194), 13 FCC Rcd. 15920 (1998) reflects any intention to eliminate the good cause requirement, but rather only the intention not to adjudicate issues relating to reasonable assurance. Initially, Willsyr's contention is illogical, as it would render applicants otherwise qualified to participate in and win the auction unable to amend their applications to modify their proposed transmitter sites. More importantly, the First Report and Order (FCC 98-194) does not mention the good cause requirement, precisely because it eliminated it. Willsyr fails to appreciate the fact that the good cause requirement to which it refers was developed under and

intimately related to a set of application procedures which no longer obtain. Thus, the notion that Liberty must demonstrate good cause for the acceptance of its amendment is premised upon the former requirements of 47 CFR 73.3522, which required such a showing for certain pre- and post- designation amendments. However, the First Report and Order substantially amended 47 CFR 73.3522, and in so doing eliminated the good cause requirement.

5. To the extent that Willsyr challenges the procedures adopted by the Commission in the First Report and Order (FCC 98-194), its challenge comes too late. It failed to seek reconsideration or review of those procedures. While Willsyr did seek judicial review of First Report and Order (FCC 98-194), it did not seek review of any issue related to the matters presented in its Opposition. See: Willsyr's Petition for Review, filed in the 1st Circuit Court of Appeals on August 14, 1998.

6. Willsyr argues that the elimination of the good cause showing should not be applicable to Liberty because Liberty had been adjudged to have filed an insincere site certification. Initially, Willsyr conveniently ignores the fact that Liberty excepted to that adverse adjudication. Furthermore, while the issue of Liberty's site certification is relevant and will be addressed and resolved by the Commission prior to the grant of its application, the resolution of that issue has no relevance to or bearing upon the acceptance of the pending amendment.

7. In Rio Grande Broadcasting, (FCC 99-111), released May 25, 1999, the Commission held that, even where the Review Board

had rejected a site change amendment as unsupported by good cause and dismissed the application for want of a transmitter site, the applicant, nevertheless, was fully qualified to participate in the auction. Id. at para. 14. It was abundantly clear that the Commission contemplated that it would be necessary for that applicant in that case to amend its application to specify a new transmitter site, were it the winning bidder.

8. With regard to Willsyr's contention that Liberty's application should have been dismissed in 1989, it failed to preserve any such argument and may not be heard to complain at this late date. More importantly, even had Liberty's application been dismissed, it would have remained qualified to participate in the auction and, consequently, to modify its transmitter site, as of right. See: Rio Grande Broadcasting, supra.

9. Willsyr argues that the current rules apply "only to those applicants who can otherwise demonstrate 'good cause' to amend and where they have not already been adjudicated to have filed speculative applications with insincere tower site certifications." However, Willsyr cites no support for this novel proposition, which is contrary to the both the First Report and Order (FCC 98-194) and Rio Grande Broadcasting (FCC 99-111). The amended rules are intended to apply to all applications for authorizations subject to auction, as is Liberty's application.

10. Willsyr's opposition focuses solely upon those portions of Liberty's pending amendment which relate to the relocation of its proposed transmitter site. Thus, even if it accepted

Willsyr's arguments, doing so would not impede the grant of Liberty's application at its current site. Under such circumstances Liberty would, following issuance of the permit, simply file an application for modification of its construction permit to relocate its transmitter site to the same site specified in the pending Amendment. No showing of good cause would be required. Given that fact, rejection of its proposed site change would merely necessitate further delay and more work for the Commission's staff. Such a delay would benefit no one, except possibly Orion, whose interim operation could continue a short while longer than would be the case, otherwise.

11. Finally, for the reasons discussed in Liberty's Reply to Orion's Opposition to Amendment (at paras. 5-6), Willsyr's reliance upon the proposed findings and conclusions of the Presiding Judge are misplaced. ¹/ Contrary to Willsyr's claim, the ALJ's findings and conclusions are not only unsupported by the "overwhelming weight of the evidence", they are unsupported by any evidence. They are cursory at best, and fail to deal intelligently or fairly with the extensive body of evidence developed. In this regard, they ignore any evidence that does not support the ALJ's predetermined outcome. Thus, having determined

1. Not even the ALJ's findings support Willsyr's unsupported and manifestly false representation that Liberty "had been informed of the lease and the unavailability to it of the proposed site." Indeed, it is contrary to his entirely unsupported speculation regarding what 'appeared' to have happened--the Liberty's general partner declined an invitation to enter into a similar lease, because she did not want to incur the cost. ID at para. 50.

at the time he added the issues how they were going to be resolved, the ALJ obviated any possibility that he could review the evidence objectively or in an disinterested manner. As such, his findings and conclusions are neither credible or unreliable.

12. Willsyr has failed to offer any credible rationale for its opposition to the acceptance of Liberty's amendment. Not only did Liberty have reasonable assurance of the availability of its original transmitter site, but the Amendment would be acceptable, even if it had not. Site availability is no longer a relevant issue and 47 CFR 73.3573, as amended, no longer requires a showing of good cause for acceptance of an amendment. While Willsyr may not agree with the changes in the Commission's Rules occasioned by the Balanced Budget Act, it has failed to timely challenge them. Accordingly, Liberty's Amendment, filed as of right in accordance with the applicable Rules, should be accepted.

Respectfully Submitted

LIBERTY PRODUCTIONS,
A LIBERTY PARTNERSHIP

By: 

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December 3, 1999

CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that I have this 3rd
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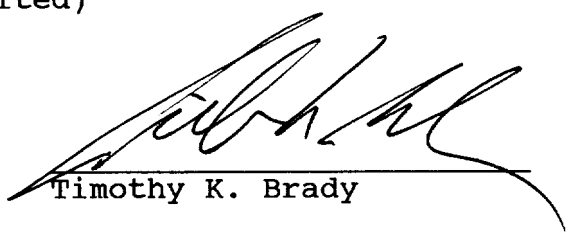
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